

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA
Big Stone Gap Division**

WILLIAM THORPE, *et al.*,

Plaintiffs,

v.

VIRGINIA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

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Case No. 2:20-cv-00007-JPJ-PMS

**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR
LEAVE TO DEPOSE BY ORAL EXAMINATION EACH OF PLAINTIFFS**

Federal Rule of Civil Procedure 30(a)(2)(B) requires this Court to grant leave to depose, by oral questions, a deponent who is confined in prison to the extent that the request is consistent with Rule 26(b)(1) and (2). Here, Defendants seek leave to depose each of Plaintiffs, all of whom are confined in prison. Deposition of each of Plaintiffs is proportional to the needs of the case, and no other source is available to obtain the discovery sought. Accordingly, the Court should grant the requested leave.

FACTS

Plaintiffs have filed this action seeking to bring claims on behalf of themselves and certain classes of inmates for alleged violations of the inmates' Constitutional rights and, for a subset of the inmates, alleged violations of the Americans with Disability Act ("ADA") and the Rehabilitation Act ("RA"). Plaintiffs' Complaint contains extensive allegations regarding Plaintiffs' mental and physical health, as well as their experiences while incarcerated in the

Virginia Department of Corrections.¹ In addition, in support of Plaintiffs' Motion for Class Certification, each of Plaintiffs filed an affidavit containing additional allegations.²

Each of Plaintiffs currently is confined in prison. Each of Plaintiffs Vernon Brooks, Brian Cavitt, Frederick Hammer, Dmitry Khavkin, Steven Riddick, Kevin Snodgrass, and Gary Wall is incarcerated in a VDOC facility. Plaintiff Gerald McNabb is incarcerated in the Wyoming State Penitentiary, a facility operated by the Wyoming Department of Corrections. Plaintiff Peter Mukuria is incarcerated in Jessup Correctional Institution, a facility operated by the Maryland Department of Public Safety and Correctional Services. Plaintiff William Thorpe is incarcerated in The J. Dale Wainwright Unit, a facility operated by the Texas Department of Correctional Justice.

ARGUMENT

Rule 30(a)(2)(B) provides that “[a] party must obtain leave of court, and the court ***must grant*** leave to the extent consistent with Rule 26(b)(1) and (2): if the deponent is confined prison.” (Emphasis added). “The Federal Rules of Civil Procedure provide that a party ‘may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case[.]’” *Eramo v. Rolling Stone LLC*, 314 F.R.D. 205, 209 (W.D. Va. 2016) (quoting Fed. R. Civ. P. 26(b)(1)); *see also CareFirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 402 (4th Cir.2003) (holding that “[d]iscovery under the Federal Rules of Civil Procedure is broad in scope and freely permitted”). Plaintiffs, the individuals who brought this case, possess information related to their claims that cannot be obtained from any other source, and Defendants are entitled to depose them both to obtain that information and to test the veracity

¹ Dkt. No. 1.

² Dkt. Nos. 174-19, -20, -21, -22, -23, -24, -25, -26, -27, -28, -58.

of their allegations. No other source or method of discovery can provide Defendants the same information.

CONCLUSION

Accordingly, the Court should enter orders granting Defendants leave to depose, by oral questions, each of Plaintiffs.

DATED: January 24, 2023

Respectfully submitted,

VIRGINIA DEPARTMENT OF CORRECTIONS,
HAROLD CLARKE, A. DAVID ROBINSON,
RANDALL MATHENA, H. SCOTT RICHESON,
HENRY PONTON, MARCUS ELAM, DENISE
MALONE, STEVEN HERRICK, TORI RAIFORD,
JEFFREY KISER, and CARL MANIS
Defendants.

By: /s/ Maya M. Eckstein
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all CM/ECF participants.